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EXAMINER


NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 Office Action Summary	Application No. 10/752,412	Applicant(s) PAQUETTE	
	Examiner Son T. Nguyen	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/5/05</u> . | 6) <input type="checkbox"/> Other: _____ |



DETAILED ACTION

1. Claim 43 has been cancelled. Pending claims are 1-42. It is noted that on pages 3-6 of the listing of claims filed 1/5/05 and pages 8-12 of the remark filed 1/5/05 that the application number (10/446281) is incorrect. The correct application number is 10/752412.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 18,23,24,34,36,40** are rejected under 35 U.S.C. 102(b) as being anticipated by Hammond (US 4271544).

For claim 18, Hammond teaches a litter box and litter mat kit; comprising: a litter box 5 ; and a litter mat 15 comprising: a base 15 having a perimeter, wherein the base extends beyond a litter box perimeter (fig. 1 near or where ref. 1 is pointing at) near an entry/exit point 8 of the litter box; and a plurality of tufts (col. 2, lines 60-65) woven through the base and extending in an angled upwardly direction therefrom, wherein the litter mat retains litter exiting the litter box.

For claim 23, Hammond teaches further including a notch (the cut-out in base 15 to accommodate the box 5) disposed near the perimeter of the base for receiving the litter box.

For claim 24, Hammond teaches wherein the notch is disposed near the center of a rear edge of the base (see fig. 1).

For claim 34, Hammond teaches a method of collecting cat litter, comprising: providing a piece of indoor/outdoor carpeting 15; shaping the piece of indoor/outdoor carpeting into a litter mat for use with a litter box 5; and placing the litter mat adjacent to near the litter box for collecting cat litter escaping confines of the litter box.

For claim 36, Hammond teaches wherein shaping the piece of indoor/outdoor carpeting includes creating a notch (the cut-out in base 15 to accommodate the box 5) on an edge adjacent a litter box adapted to receive the litter box.

For claim 40, Hammond teaches further including masking litter with a plurality of tufts of the litter mat (col. 2, lines 60-65).

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claims 18,19,29,32,34,37,40** are rejected under 35 U.S.C. 102(e) as being anticipated by Holtrop et al. (US 6357388).

For claim 18, Holtrop et al. teach a litter box and litter mat kit, comprising: a litter box 12; and a litter mat 10 comprising: a base 16,20 having a perimeter, wherein the base extends beyond a litter box perimeter (fig. 1, the mat appears to fit right under the

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front edge of the box) near an entry/exit point 14 of the litter box; and a plurality of tufts 18 woven through the base and extending in an angled upwardly direction therefrom, wherein the litter mat retains litter exiting the litter box.

For claim 19, Holtrop et al. teach wherein the base includes a first substrate 16 and a second substrate 20.

For claim 29, Holtrop et al. teach wherein the tufts have a color combination (col. 2, line 55).

For claim 32, Holtrop et al. teach wherein the litter box has one entry/exit 14 and wherein the tufts (of figs. 2 & 4 due to the various angled configuration) are angled toward the entry/exit of the litter box.

For claim 34, Holtrop et al. teach a method of collecting cat litter, comprising: providing a piece of indoor/outdoor carpeting 10; shaping the piece of indoor/outdoor carpeting into a litter mat for use with a litter box 12; and placing the litter mat adjacent to near the litter box for collecting cat litter escaping confines of the litter box (see fig. 1).

For claim 37, Holtrop et al. teach wherein placing the litter mat adjacent to the litter box includes facing angled tufts toward the litter box. See figs. 2 & 4, the tufts 24,25 are angled so when one placed the mat adjacent the box, the angled tufts will be toward the box since the tufts 24,25 have various angled tuft configurations.

For claim 40, Holtrop et al. further including masking litter with a plurality of tufts of the litter mat (the litter from the paw of the cat will be dislodge and trapped in the tufts).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1,7,9,12-16,22,28,41,42** are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtrop et al. (US 6357388) in view of Andersen (US 5233787).

For claims 1,9,22 & 28, Holtrop et al. teach a litter mat for use with a litter box, comprising: a base 16,20 having a first substrate 16 and a second substrate 20, wherein the second substrate is fixedly attached to the first substrate; a plurality of tufts 18 extending through the first substrate and in an angled upwardly direction therefrom; and a perimeter having an edge portion (see fig. 1, the mat appears to be placed under the box at the front edge of the box) shaped to correspond to a an exterior contour portion of a the litter box, wherein the litter mat retains litter exiting (at ref. 14) the litter box. However, Holtrop et al. are silent about the second substrate being constructed from a non-slip material.

Andersen teaches a litter mat comprising first 4 and second 2 substrates, the second substrate being made out of a non-slip material such as rubber (col. 2, lines 31-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the second substrate of Holtrop et al. out of a non-slip material such as rubber as taught by Andersen in order to hold the mat in place.

For claim 7, in addition to the above, Andersen teaches the first substrate is constructed from a hybrid woven and non-woven material (col. 2, lines 31-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the first substrate of Holtrop et al. out of a hybrid woven and non-woven material as taught by Andersen, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 12, Holtrop et al. as modified by Andersen (emphasis on Holtrop) further teaches wherein the tufts have a color combination (col. 2, line 55).

For claims 13 & 14, Holtrop et al. as modified by Andersen are silent about the angle of the tufts relative to the base being between 30 to 50 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the angle of the tufts of Holtrop et al. as modified by Andersen relative to the base being between 30 to 50 degrees or approximately 40 degrees, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 15, Holtrop et al. as modified by Andersen (emphasis on Holtrop) teach wherein the tufts are angled toward a part of the base (see figs. 2 & 4, the tufts 24,25 are angled so when one placed the mat adjacent the box, the angled tufts will be toward the box since the tufts 24,25 have various angled tuft configurations).

For claim 16, Holtrop et al. as modified by Andersen are silent about wherein the litter mat retains at least ninety nine percent of the litter propelled toward the litter mat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have at least ninety nine percent of the litter propelled toward the litter mat of Holtrop et al. as modified by Andersen, depending on the force of the cat pawing the mat and how long the cat stay on the mat pawing.

For claim 41, Holtrop et al. teach providing a first substrate 16 but are silent about the first substrate being made out of a hybrid woven and non-woven material. Andersen teaches the first substrate is constructed from a hybrid woven and non-woven material (col. 2, lines 31-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the first substrate of Holtrop et al. out of a hybrid woven and non-woven material as taught by Andersen, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 42, Holtrop et al. teach providing a second substrate 20 but are silent about the second substrate being made out of a rubber material. Andersen teaches a litter mat comprising first 4 and second 2 substrates, the second substrate being made out of a non-slip material such as rubber (col. 2, lines 31-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the second substrate of Holtrop et al. out of a non-slip material such as rubber as taught by Andersen in order to hold the mat in place.

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8. **Claims 2,3** are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtrop et al. as modified by Andersen as applied to claim 1 above, and further in view of Hammond (as above).

For claim 2, Holtrop et al. as modified by Andersen are silent about wherein the edge portion shaped to fit around a an exterior portion of a litter box is a notch. As mentioned above, Hammond teaches a notch in the mat (see claim 23). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a notch as taught by Hammond in the mat of Holtrop et al. as modified by Andersen in order to accommodate to certain desired coverage shape relative to the litter box.

For claim 3, Holtrop et al. as modified by Andersen are silent about wherein the edge portion shaped to fit around a portion of a litter box is disposed near a center of the a rear edge of the litter mat. As mentioned above, Hammond teaches wherein the edge portion shaped to fit around a portion of a litter box is disposed near a center of the a rear edge of the litter mat (see claim 24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a notch as taught by Hammond in the mat of Holtrop et al. as modified by Andersen in order to accommodate to certain desired coverage shape relative to the litter box.

9. **Claims 4,5,17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtrop et al. as modified by Andersen as applied to claim 1 above, and further in view of Link et al. (US 6386143).

For claims 4 & 5, Holtrop et al. as modified by Andersen are silent about wherein the litter mat includes an arcuate edge and wherein the arcuate edge has a convex shape. Link et al. teach a pad for litter box comprising an arcuate edge having a convex shape (where ref. 20 is pointing at). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an arcuate edge as taught by Link et al. in the mat of Holtrop et al. as modified by Andersen in order to prevent injury to the animal due to the corner being arcuate.

For claim 17, Holtrop et al. as modified by Andersen are silent about wherein the litter mat includes a border disposed around at least a portion of the perimeter. In addition to the above, Link et al. further teach a border 50,60,70 disposed around at least a portion of the perimeter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a border as taught by Link et al. around the perimeter of the mat of Holtrop et al. as modified by Andersen in order to retain dislodged litter material and to make the mat more pleasing in appearance.

10. **Claims 6,8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtrop et al. as modified by Andersen as applied to claim 1 above, and further in view of Faria et al. (US 3332828).

For claim 6, Holtrop et al. as modified by Andersen are silent about wherein the tufts are constructed from a polypropylene material. Faria et al. teach a pile product that can be used as a mat, the mat comprising tufts 12 that are made out of polypropylene material (col. 2, line 26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the tufts of

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Holtrop et al. as modified by Andersen out of polypropylene as taught by Faria et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 8, Holtrop et al. as modified by Andersen are silent about wherein at least one of the woven and non-woven material is constructed from a polypropylene material. In addition to the above, Faria et al. teach a first substrate being made out of a polypropylene material (col. 3, lines 17-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the first substrate of Holtrop et al. as modified by Andersen out of polypropylene material as further taught by Faria et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

11. **Claims 10,11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtrop et al. as modified by Andersen as applied to claim 1 above, and further in view of Brazzell (US 3752121).

For claim 10, Holtrop et al. as modified by Andersen are silent about further including a third substrate attached to at least one of the first and second substrates. Brazzell teaches a litter mat for use with a litter box, comprising: a base having a first substrate 32, a second substrate 32,33, and a third substrate 34 attached to the second substrate 33. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a third substrate as taught by Brazzell attached

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to the second substrate of Holtrop et al. as modified by Andersen in order to hold in liquid that may have seeped through the first and second substrate.

For claim 11, Holtrop et al. as modified by Andersen and Brazzell are silent about wherein the third substrate is constructed from one of a latex rubber and synthetic rubber material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the third substrate of Holtrop et al. as modified by Andersen and Brazzell out of a latex rubber and synthetic rubber material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

12. **Claims 20,21,27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtrop et al. (as above) in view of Faria et al. (as above).

For claims 20 & 21, Holtrop et al. are silent about the first substrate is constructed from a hybrid woven and non-woven material. Faria et al. teach a mat comprising a substrate constructed from a hybrid woven and non-woven material such as polypropylene (col. 3, lines 17-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the first substrate of Holtrop et al. out of a hybrid woven and non-woven material such as polypropylene as taught by Faria et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

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For claim 27, Holtrop et al. are silent about the tufts are constructed from a polypropylene material. In addition to the above, Faria et al. teach the tufts being constructed from a polypropylene material (col. 2, lines 23-30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the turfs of Holtrop et al. out of a polypropylene material as taught by Faria et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

13. **Claims 25,26,33,38,39** are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtrop et al. (as above) in view of Link et al. (as above).

For claims 25 & 26, Holtrop et al. are silent about wherein the litter mat includes an arcuate edge and wherein the arcuate edge has a convex shape. Link et al. teach a pad for litter box comprising an arcuate edge having a convex shape (where ref. 20 is pointing at). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an arcuate edge as taught by Link et al. in the mat of Holtrop et al. in order to prevent injury to the animal due to the corner being arcuate.

For claim 33, Holtrop et al. are silent about wherein the litter mat includes a border disposed around at least a portion of the perimeter. In addition to the above, Link et al. further teach a border 50,60,70 disposed around at least a portion of the perimeter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a border as taught by Link et al. around the perimeter

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of the mat of Holtrop et al. in order to retain dislodged litter material and to make the mat more pleasing in appearance.

For claim 38, it appears from fig. 1 of Holtrop et al. that the mat 10 is placed under the front edge of the litter box 12. However, in the event that this is not the case, Link et al. teach their mat 10 being placed or at least a portion of the mat being placed under the litter box. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place at least a portion of the mat of Holtrop et al. under the litter box as taught by Link et al. in order to hold down the mat so that the mat can be near or adjacent the box.

For claim 39, Holtrop et al. are silent about wherein the litter mat includes a border disposed around at least a portion of the perimeter. In addition to the above, Link et al. further teach a border 50,60,70 disposed around at least a portion of the perimeter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a border as taught by Link et al. around the perimeter of the mat of Holtrop et al. in order to retain dislodged litter material and to make the mat more pleasing in appearance.

14. **Claims 30,31,35** are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtrop et al. (as above).

For claims 30 & 31, Holtrop et al. are silent about the angle of the tufts relative to the base being between 30 to 50 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the angle of the tufts of Holtrop et al. relative to the base being between 30 to 50 degrees or approximately

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40 degrees, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 35, Holtrop et al.'s litter mat is shaped rectangular as shown in fig. 1. However, it is uncertain if this rectangular shape is done by trimming. It is notoriously well known in the carpet/floor mat industry to trim the mat into desired shaped based on the user's preference or intended use of the mat. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the step of trimming in the method of Holtrop et al. for such step is notoriously well known in the mat industry to produce the desired shape of mat for intended use of the user.

Response to Arguments

15. Applicant's arguments with respect to claims 1-42 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765 (for the month of March). After March, the Examiner can be reached at 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Son T. Nguyen
Primary Examiner
Art Unit 3643

stn